

§ 162.104

parts specific parts specific to particular tribes;

(3) Timber contracts, as covered by part 163 of this chapter;

(4) Management contracts, joint venture agreements, or other encumbrances of tribal land, as covered by 25 U.S.C. §81, as amended;

(5) Leases of water rights associated with Indian land, except to the extent the use of such water rights is incorporated in a lease of the land itself; and

(6) Easements or rights-of-way, as covered by part 169 of this chapter.

(b) Where appropriate, the regulations in this part that specifically refer to leases will apply to permits that authorize the temporary, non-possessory use of Indian land or Government land, not including:

(1) Land assignments and similar instruments authorizing temporary uses by tribal members, in accordance with tribal laws or custom; and

(2) Trader's licenses issued under part 140 of this chapter.

§ 162.104 When is a lease needed to authorize possession of Indian Land?

(a) An Indian landowner who owns 100% of the trust or restricted interests in a tract may take possession without a lease or any other prior authorization from us.

(b) An Indian landowner of a fractional interest in a tract must obtain a lease of the other trust and restricted interests in the tract, under these regulations, unless the Indian co-owners have given the landowner's permission to take or continue in possession without a lease.

(c) A parent or guardian of a minor child who owns 100% of the trust interests in the land may take possession without a lease. We may require that the parent or guardian provide evidence of a direct benefit to the minor child. When the child reaches the age of majority, a lease must be obtained under these regulations to authorize continued possession.

(d) Any other person or legal entity, including an independent legal entity owned and operated by a tribe, must obtain a lease under these regulations before taking possession.

25 CFR Ch. I (4–1–08 Edition)

§ 162.105 Can tracts with different Indian landowners be unitized for leasing purposes?

(a) A lease negotiated by Indian landowners may cover more than one tract of Indian land, but the minimum consent requirements for leases granted by Indian landowners under subparts B through D of this part will apply to each tract separately. We may combine multiple tracts into a unit for leases negotiated or advertised by us, if we determine that unitization is in the Indian landowners' best interests and consistent with the efficient administration of the land.

(b) Unless otherwise provided in the lease, the rent or other consideration derived from a unitized lease will be distributed based on the size of each landowner's interest in proportion to the acreage within the entire unit.

§ 162.106 What will BIA do if possession is taken without an approved lease or other proper authorization?

(a) If a lease is required, and possession is taken without a lease by a party other than an Indian landowner of the tract, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the party in possession is engaged in negotiations with the Indian landowners to obtain a lease, we will take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law.

(b) Where a trespass involves Indian agricultural land, we will also assess civil penalties and costs under part 166, subpart I, of this chapter.

§ 162.107 What are BIA's objectives in granting or approving leases?

(a) We will assist Indian landowners in leasing their land, either through negotiations or advertisement. In reviewing a negotiated lease for approval, we will defer to the landowners' determination that the lease is in their best interest, to the maximum extent possible. In granting a lease on the landowners' behalf, we will obtain a fair annual rental and attempt to ensure (through proper notice) that the use of the land is consistent with the

landowners' wishes. We will also recognize the rights of Indian landowners to use their own land, so long as their Indian co-owners are in agreement and the value of the land is preserved.

(b) We will recognize the governing authority of the tribe having jurisdiction over the land to be leased, preparing and advertising leases in accordance with applicable tribal laws and policies. We will promote tribal control and self-determination over tribal land and other land under the tribe's jurisdiction, through contracts and self-governance compacts entered into under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. § 450f *et seq.*

§ 162.108 What are BIA's responsibilities in administering and enforcing leases?

(a) We will ensure that tenants meet their payment obligations to Indian landowners, through the collection of rent on behalf of the landowners and the prompt initiation of appropriate collection and enforcement actions. We will also assist landowners in the enforcement of payment obligations that run directly to them, and in the exercise of any negotiated remedies that apply in addition to specific remedies made available to us under these or other regulations.

(b) We will ensure that tenants comply with the operating requirements in their leases, through appropriate inspections and enforcement actions as needed to protect the interests of the Indian landowners and respond to concerns expressed by them. We will take immediate action to recover possession from trespassers operating without a lease, and take other emergency action as needed to preserve the value of the land.

§ 162.109 What laws, other than these regulations, will apply to leases granted or approved under this part?

(a) Leases granted or approved under this part will be subject to federal laws of general applicability and any specific federal statutory requirements that are not incorporated in these regulations.

(b) Tribal laws generally apply to land under the jurisdiction of the tribe

enacting such laws, except to the extent that those tribal laws are inconsistent with these regulations or other applicable federal law. These regulations may be superseded or modified by tribal laws, however, so long as:

(1) The tribal laws are consistent with the enacting tribe's governing documents;

(2) The tribe has notified us of the superseding or modifying effect of the tribal laws;

(3) The superseding or modifying of the regulation would not violate a federal statute or judicial decision, or conflict with our general trust responsibility under federal law; and

(4) The superseding or modifying of the regulation applies only to tribal land.

(c) State law may apply to lease disputes or define the remedies available to the Indian landowners in the event of a lease violation by the tenant, if the lease so provides and the Indian landowners have expressly agreed to the application of state law.

§ 162.110 Can these regulations be administered by tribes, on the Secretary's or on BIA's behalf?

Except insofar as these regulations provide for the granting, approval, or enforcement of leases and permits, the provisions in these regulations that authorize or require us to take certain actions will extend to any tribe or tribal organization that is administering specific programs or providing specific services under a contract or self-governance compact entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450f *et seq.*).

§ 162.111 Who owns the records associated with this part?

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under 25 U.S.C. § 450f *et seq.*, including the operation of a trust program; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.